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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**Item 52 ID# 2979
RESOLUTION E-3857
December 4, 2003**

R E S O L U T I O N

Resolution E-3857. Pacific Gas and Electric Company for approval of procurement contracts, pursuant to a subsequent bid refresh process, for up to fifty percent of PG&E's 2004 non-baseload net open position as authorized in Decision 03-08-066.

By Advice Letter 2427-E Filed on September 30, 2003.

SUMMARY

Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 2427-E on September 30, 2003, requesting Commission approval of proposed electric procurement transactions, pursuant to a subsequent bid refresh process, for up to fifty percent of PG&E's non-baseload net open position as authorized in Decision (D.) 03-08-066.

D.03-08-066 granted the utility early authorization to procure up to fifty percent of its non-baseload 2004 short-term procurement needs under contract of up to one year subject to the following conditions:

1. Prior to issuance of a Request for Offers (RFO), PG&E shall timely provide its Procurement Review Group (PRG) an analysis of product choices as well as RFO language, bid selection and refresh processes, and schedule.
2. After receiving bids from its RFO, PG&E shall provide the PRG a bid summary and analysis, as well as its selection process, with a two-week window for PRG members to then conduct their own independent analysis and provide written comments to PG&E prior to submission of an Advice Letter.

PG&E's PRG was closely involved with the bid solicitation and evaluation process.



The transactions, for which PG&E is seeking approval, were solicited under a Request for Offers (RFO) issued on August 28, 2003. The transactions are energy options that will allow PG&E to meet a portion of its capacity needs for the summer of 2004. The RFO is conducted in two stages. In the first stage, PG&E receives indicative or preliminary bids. Indicative bids were received on September 10, 2003. After review and approval of the preliminary results by the Commission, bidders will be asked to refresh their prices with firm offers. PG&E will reevaluate the refreshed bids and then respond to the bidders within 24 hours and confirmations will be executed immediately after that.

PG&E requests that AL 2427-E be effective on November 13, 2003.

The Utility Reform Network (TURN) confidentially and timely protested AL 2427-E on October 20, 2003. Redacted copies were distributed to the service list for R.01-10-024. PG&E submitted a non-confidential response on October 27, 2003.

The proposed contracts submitted by PG&E for Commission approval are subject to a bid refresh process. PG&E shall provide the PRG with analyses and a summary of the final results of the RFO bid refresh process. The data will not be used to challenge the just and reasonableness of the contracts, but rather, the PRG will assess the performance of the bid evaluation and selection process and identify any areas that need improvement for future RFOs.

This resolution approves AL 2427-E, as modified, effective today.

BACKGROUND

On September 30, 2003, PG&E filed Advice Letter 2427-E, requesting Commission approval of proposed electric procurement transactions, pursuant to a subsequent bid refresh process, for up to fifty percent of PG&E's non-baseload net open position as authorized in Decision (D.) 03-08-066. PG&E requests the Commission find the proposed contracts entered into, pursuant to the bid evaluation and selection process and a subsequent bid refresh process, reasonable and prudent for purposes of recovery in rates without further Commission review.

In D.03-08-066, issued on August 21, 2003, the Commission granted PG&E's motion for expedited partial authorization. The decision granted early authorization to procure up to fifty percent of its non-baseload 2004 short-term procurement needs under contract of up to one year, as requested by PG&E, subject to the following conditions:

1. Prior to issuance of a Request for Offers (RFO), PG&E shall timely provide its Procurement Review Group (PRG) an analysis of product choices as well as RFO language, bid selection and refresh processes, and schedule.
2. After receiving bids from its RFO, PG&E shall provide the PRG a bid summary and analysis, as well as its selection process, with a two-week window for PRG members to then conduct their own independent analysis and provide written comments to PG&E prior to submission of an Advice Letter.

Decision 02-08-071 ordered each utility to establish a Procurement Review Group (PRG). The PRG for PG&E comprises the California Energy Commission (CEC), California Utility Employees (CUE), Consumers Union (CU), Department of Water Resources (DWR), the Commission's Energy Division, the Office of Ratepayer Advocates (ORA), Natural Resources Defense Council (NRDC), and The Utility Reform Network (TURN). The members of the PRG receive information on and review the utility's procurement strategy and accordingly, are subject to a non-disclosure agreement.

On August 28, 2003, PG&E issued an RFO for summer capacity for the period between June 1, 2004 and September 30, 2004. The RFO process provided bidders with choices of transaction terms. Bidders had the option of submitting multiple bids and were required to indicate the terms of the transactions.

As described in Appendix C of AL-2427-E, bidders could submit offers of no less than 50 megawatts (MW) per period. The term could be for individual months (June, July, August or September), a July-August strip, or for a third quarter (Q3 defined as July through September) strip. Bidders were given three product



options: 5×8, 5×16, and 6×16¹. The delivery point must be within the California Independent System Operator (CAISO) zone North of Path 15 (bidders may propose specific NP15 delivery points), South of Path 15 or ZP26. The bidder must specify the strike frequency and limitation at: unlimited, 5 times per month 10 times per month. The bidder must also specify the exercise duration: daily, or weekly. The bidder provides a strike price² that is either a fixed price per megawatt-hour (MWh) or indexed to a gas price at a fixed heat rate. Lastly, a capacity premium is required.³ All of this information is detailed in the RFO transmittal in Appendix C.

The RFO is conducted in two stages. In the first stage, PG&E receives indicative or preliminary bids. After review and approval of the preliminary results by the Commission, bidders will be asked to refresh their prices with firm offers. PG&E will reevaluate the refreshed bids and then respond to the bidders within 24 hours, with confirmations occurring immediately after that. The deadline for indicative offers was September 10, 2003.

NOTICE

Notice of AL 2427-E was made by publication in the Commission's Daily Calendar. Pacific Gas and Electric Company states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

¹ **5×8**, Monday through Friday, excluding NERC holidays, Hour Ending (HE) 13 through HE20

5×16, Monday through Friday, excluding NERC holidays, HE7 through HE22

6×16, Monday through Saturday, excluding NERC holidays, HE7 through HE22

² The Strike Price is the price at which the energy option is executed. If the option is exercised, PG&E pays the seller either a fixed price or a heat rate indexed price for each MWh received at the delivery point. If the option is not exercised, then PG&E only pays the capacity premium and no energy costs. The Strike Price is pre-defined as a Fixed Strike Price (\$/MWh) or an Indexed Strike Price. The Indexed Strike Price is dependent on the Heat Rate and the Platt's Gas Daily Index corresponding to the requested Delivery Points.

³ The capacity premium is paid regardless of whether the option is executed or not.



The Advice Letter includes appendices, of which portions are confidential. These portions have been marked Confidential Protected Material and were distributed only to non-market participants who are members of PG&E's Procurement Review Group, who have signed appropriate Non-Disclosure Certificates.

PROTESTS

Confidential comments to PG&E's Advice Letter AL 2427-E were timely filed by TURN. TURN generally supports PG&E's filing, but requested that the Commission approve the Advice Letter subject to one condition. The filing will be treated as a protest. Confidential material included in the filing is protected by Public Utilities (PU) Code Section 583. Redacted copies were distributed to the service list for R.01-10-024. TURN's protest was received on October 20, 2003.

PG&E responded to TURN's protest on October 27, 2003.

DISCUSSION

In order for the Commission to establish whether PG&E's request should be approved, the different elements of the procurement process are examined.

Bid Evaluation

On August 14, 2003, prior to issuing the RFO, PG&E discussed with its PRG the offer evaluation methodology for the anticipated initial RFO responses. The evaluation methodology is described in Confidential Appendix B, details of which are classified in accordance to the non-disclosure agreement executed between PG&E and the members of its PRG, and as Confidential Protected Material pursuant to PU Code Section 583.

Bid Solicitation Process

PG&E issued the RFO on August 28, 2003. The RFO transmittal letter, the format in which the bids were to be made and representative confirmation documents were all reviewed by PG&E's PRG prior to the issuance of the RFO. PG&E received bids from numerous counterparties.

Bid Data Provided



PG&E attached with AL 2427-E information on the proposed procurement transactions for which it seeks Commission approval. All Appendices, with the exception of Appendices A and C were filed by PG&E as Confidential Protected Material pursuant to PU Code Section 583. Confidential materials are available to Energy Division staff, and to PRG members who have signed the non-disclosure agreement. Confidential materials include the evaluation process used to rank offers, a summary of indicative bids received, PRG meeting minutes and comments, and a utility risk management committee presentation.

Procurement Review Group Involvement

PG&E's PRG met on two occasions before AL 2427-E was filed. On August 14, 2003, the PRG met to discuss PG&E's need assessment for 2004, the RFO that would be used to solicit products to meet part of the need, and evaluation methods. PG&E sought feedback from its PRG on the draft RFO documents before issuing the RFO on August 28, 2003.

On September 25, 2003, the PRG met to discuss the indicative bids that had been received from the RFO. The bids were evaluated and PG&E's preliminary recommendations were presented to the PRG. PG&E requested feedback from its PRG and proposed a schedule for the filing of an advice letter. The minutes of those meetings are contained in Confidential Appendix E.

Bid Refresh Process

PG&E did not pay any premiums or fees to keep the selected bids open. The proposed contracts submitted by PG&E for Commission approval are subject to a bid refresh process. PG&E has filed a refresh process method, details of which are classified as confidential in accordance with the non-disclosure agreement executed between PG&E and the PRG, and as Confidential Protected Material pursuant to PU Code Section 583. Contract prices will be finalized by each seller via the bid refresh process, which will commence subsequent to Commission approval of AL 2427-E. We direct PG&E to provide its PRG with refreshed bid information, summarized in a fashion similar to the initial RFO bid results. PG&E shall also provide the same type of analysis as previously performed.

After the bid information is refreshed and the PRG has completed its review process, PG&E shall submit a compliance advice letter filing to the Commission. The filing shall include copies of the contracts chosen, addressed to the Director of the Commission's Energy Division. The filing shall also include an updated version of Appendix D to AL 2427-E, Bid Summary, any PRG meeting minutes and comments and all analysis that supports the selection of the chosen contracts.

Confidentiality of Information

The Commission seeks to balance the public's need for access to information and the protection of confidential commercial data while striving for the highest possible level of transparency. Unless the disclosure of confidential information results in a detrimental consequence for PG&E's ratepayers, the public should have access to the information. In light of the need for expedited treatment of these procurement transactions, we will maintain the confidential status of the material that PG&E has filed with this advice letter. Energy Division believes that in the near future, the Commission should revisit the matter of confidential information being filed in the procurement rulemaking.

TURN's Protest

TURN filed confidential comments on October 20, 2003, in support of PG&E's request, subject to one condition. TURN requests that the Commission require PG&E to provide:

“...its Procurement Review Group (PRG), on an *ex post* basis, the same type of bid summary and analysis PG&E provided the PRG before its September 25 meeting pursuant to D.03-08-066. Such *ex post* review is not intended to second guess whether PG&E's actions were ‘reasonable and prudent’, but instead to assess the performance of the ‘bid evaluation and selection process’ [redacted] and determine whether improvements might be proposed for the evaluation of responses to future Requests for Offers (RFOs).”

TURN, as a member of the PRG, had the opportunity to examine PG&E's evaluation methodology and preliminary results of the August 28, 2003 RFO.

TURN believes that “PG&E will likely complete its proposed bid refresh update process in a manner that will yield reasonable results for ratepayers.”

PG&E’s Response

PG&E responded to TURN’s comments on October 27, 2003 and has no objection to TURN’s proposed condition.

COMMENTS

Circulation of this Resolution

This resolution was circulated via e-mail on November 24, 2003, to the R.01-10-024 service list and to PG&E’s PRG. Comments are due back by 9:00 a.m. on December 1, 2003; there will not be a reply comment period.

Energy Division requests that the 30-day comment period for this resolution be reduced to 7 days because moving forward with this resolution in an expeditious manner will allow PG&E greater flexibility in procuring products necessary to meet the 2004 summer capacity deficit. Securing transactions as early as possible will reduce the likelihood of PG&E facing higher prices.

Shortened Comment Period

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(3) provides that this 30-day period may be reduced/waived by Commission adopted rule.

The 30-day comment period has been reduced because the Commission has determined that public necessity, as defined in Rule 77.7(f)(9), requires reduction/waiver of the 30-day period.

We have also balanced the public interest in avoiding the possible harm to public welfare flowing from delay in considering the Resolution against the public interest in having the full 30-day period, or even a reduced period, for review and comment, and have concluded that the former outweighs the latter. Failure to adopt this resolution before the expiration of the 30-day review and comment period would cause significant harm to the public welfare. It is in the ratepayers’



best interest to move expeditiously in this matter, because allowing PG&E to secure procurement transactions over a longer period of time, between now and summer 2004, reduces the risk of exposure to high prices in the future. Public necessity requires the waiver of the 30-day comment period in order to secure the potential benefits of the proposed procurement contracts to PG&E customers. Thus, the 30-day comment period was reduced due to public necessity.

Discussion of Comments Received

Comments were submitted by PG&E on November 26, 2003. PG&E provided non-substantive edits to clarify and improve the accuracy of the draft Resolution, which have been incorporated into the draft Resolution. PG&E also recommends striking the last sentence in the “Confidentiality of Information” section, which reads, “Energy Division believes that in the near future, the Commission should revisit the matter of confidential information being filed in the procurement rulemaking.” PG&E believes that the issue of confidentiality has been adequately addressed and that releasing bid information would be detrimental to PG&E’s future negotiating position.

FINDINGS

1. D.03-08-066 granted PG&E early authorization to procure up to fifty percent of its non-baseload 2004 short-term procurement needs under contracts of up to one year.
2. The PRG for PG&E comprises the California Energy Commission (CEC), California Utility Employees (CUE), Consumers Union (CU), Department of Water Resources (DWR), the Commission’s Energy Division, the Office of Ratepayer Advocates (ORA), Natural Resources Defense Council (NRDC), and The Utility Reform Network (TURN).
3. PG&E filed AL 2427-E on September 30, 2003, requesting Commission approval of procurement contracts, pursuant to a subsequent bid refresh process, for up to fifty percent of PG&E’s 2004 non-baseload net open position.
4. TURN filed confidential comments to the Advice Letter 2427-E.

5. Concerns regarding the bid refresh process will be addressed through consultation and review by the PRG. PG&E shall provide to its PRG refreshed bid information, summarized in a fashion similar to the initial RFO bid results. PG&E shall also provide the same type of analysis as previously performed.
6. We should approve AL 2427-E, as modified, effective today.
7. We do not establish a contract approval standard in this Resolution, thus the Commission's approval of the contracts is not indicative of approval of any contracts to be submitted in the future.

THEREFORE IT IS ORDERED THAT:

1. PG&E's request to enter into the proposed procurement transactions pursuant to the subsequent bid refresh process, as requested in Advice Letter AL 2427-E, is approved as modified.
2. After the bid information is refreshed and the PRG has completed its review process, PG&E will submit a compliance advice letter filing to the Commission. The filing will include copies of the contracts chosen, addressed to the Director of the Commission's Energy Division. The filing will also include an updated version of Appendix D to AL 2427-E, Bid Summary, any PRG meeting minutes and comments and all analysis that supports the selection of the chosen contracts.
3. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on December 4, 2003; the following Commissioners voting favorably thereon:

WILLIAM R. AHERN
Executive Director